

Message Text

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TO AMEMBASSY LAGOS IMMEDIATE

C O N F I D E N T I A L STATE 240820

E.O. 11652: GDS

TAGS: ETRD, PFOR

SUBJECT: ARAB BOYCOTT: FURTHER REPRESENTATIONS CONCERNING
U.S. ANTI-BOYCOTT LEGISLATION

REF: A) STATE 43693; B) STATE 80062; C) STATE 86310

1. THIS IS A REPEAT CABLE OF STATE 142390 DATED
JUNE 18, 1977.

2. QUOTE ON JUNE 7 AND JUNE 10, RESPECTIVELY, THE SENATE
AND HOUSE PASSED THE CONFERENCE VERSION OF THE EXPORT
ADMINISTRATION ACT CONTAINING COMPROMISE ANTI-BOYCOTT
PROVISIONS. PRESIDENT IS EXPECTED TO SIGN EXPORT
ADMINISTRATION ACT INTO LAW IN COMING WEEK.

3. OVER PAST FOUR MONTHS ADMINISTRATION AND CONGRESS HAVE
COOPERATED IN DEVELOPING CAREFULLY DIRECTED NON-
CONFRONTATIONAL LEGISLATION INTENDED TO CURB FOREIGN
BOYCOTT INTRUSIONS INTO U.S. COMMERCE WHILE PROTECTING
OTHER MAJOR U.S. INTERESTS SUCH AS FURTHERING A COOPERATIVE
APPROACH TO PEACEMAKING IN MIDDLE EAST. THE COMPROMISE
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REACHED BETWEEN THE ADMINISTRATION AND THE CONGRESS WITH
HELP FROM BUSINESS ROUNDTABLE AND KEY JEWISH GROUPS SEEKS
TO AVOID CONFRONTING BOYCOTTING COUNTRIES OVER EXERCISE OF

THEIR SOVEREIGN RIGHT TO BOYCOTT THIRD COUNTRIES OR TO
REGULATE THEIR OWN COMMERCE, INCLUDING SOURCE OF THEIR
IMPORTS AND DESTINATION OF THEIR EXPORTS. AT THE SAME
TIME, THE NEW LEGISLATION WILL TAKE U.S. SUPPLIERS OUT
OF THE ROLE OF AGENT OR PARTICIPANT IN BOYCOTT ACTIONS
DIRECTED AGAINST A THIRD COUNTRY OR ANOTHER (BLACKLISTED)

FIRM.

4. IT IS URGENT THAT BOYCOTTING COUNTRIES UNDERSTAND INTENT AND CONTENT OF NEW LAW SO THAT THEY MAY BEGIN TO MAKE ACCOMMODATIONS CONSISTENT WITH IT. ACCORDINGLY, EACH ACTION ADDRESSEE IS REQUESTED TO APPROACH SENIOR HOST GOVERNMENT OFFICIAL(S) AT EARLY DATE TO EXPLAIN THE SUCCESS WHICH THIS ADMINISTRATION HAS HAD IN SHAPING THE FINAL LEGISLATION IN NON-CONFRONTATIONAL TERMS. ALTHOUGH FORMAL INTERPRETATION OF THE NEW LAW MUST AWAIT THE WRITING OF COMMERCE DEPARTMENT REGULATIONS. THE SHAPE OF CHANGES WHICH WILL BE REQUIRED IN U.S. BUSINESS PRACTICES HAS BEEN NOTED IN REFERENCE CABLES DESCRIBING DRAFT LEGISLATION AND ITS LIKELY IMPLICATIONS. FOLLOWING KEY CHANGES IN BOYCOTTING COUNTRY PRACTICES WOULD OBIVIATE POTENTIAL PROBLEMS: (A) FURTHER SHIFT TO USE OF NORMAL COMMERCIAL DOCUMENTATION IN TENDERS. REQUALIFICATION APPLICATIONS, LETTERS OF CREDIT, SHIPPING DOCUMENTS, CONTRACTS. PATENT/TRADEMARK REGISTRATIONS, ETC. (B) ACCEPTANCE OF FACT THAT U.S. FIRMS WILL BE UNABLE TO FILL OUT BOYCOTT QUESTIONNAIRES OR RESPOND TO OTHER BOYCOTT INQUIRIES RE PAST OR PROSPECTIVE BUSINESS DEALINGS WITH BOYCOTTED COUNTRY OR WITH BLACKLISTED FIRMS
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AND (C) END OF EXPECTATION THAT U.S. SUPPLIERS MIGHT PLAY ACTIVE PART IN BOYCOTT-RELATED SELECTION OF GOODS OR COMPONENTS. (FURTHER GUIDANCE WILL BE PROVIDED AS PROGRESS IS MADE IN PREPARING COMMERCE REGULATIONS.)

5. WE BELIEVE REPRESENTATIONS TO POLICYMAKING OFFICIALS IN HOST COUNTRIES OFFER BEST CHANCE OF ELICITING UNDERSTANDING AND DESIRED DECISIONS OF BOYCOTTING GOVERNMENTS. WE RECOGNIZE THAT DIRECT CONTACTS BY EMBASSIES WITH LOCAL BOYCOTT OFFICIALS IN HOST COUNTRY MINISTRIES OR BY EMBASSY DAMASCUS WITH CENTRAL BOYCOTT OFFICE OFFICIALS MAY ALSO BE HELPFUL ON OCCASION IN THIS REGARD. ACCORDINGLY, POSTS MAY HENCEFORTH. AT THEIR DISCRETION, MAKE DIRECT CONTACTS WITH BOYCOTT OFFICIALS IF DEEMED USEFUL IN PROMOTING U.S. INTERESTS UNDER NEW LEGISLATION. WHILE DIALOGUE WITH BOYCOTT OFFICIALS MAY SERVE TO EXPLAIN DETAILS OF U.S. LAW AND REGULATION, POSTS SHOULD USE CARE TO ENSURE THAT CONTACTS, IF ANY, DO NOT IMPLY U.S. CONDONEMENT OF BOYCOTT PRACTICES DIRECTED AT U.S. FIRMS (OR AT COUNTRIES WITH WHICH WE MAINTAIN FRIENDLY RELATIONS). POSTS ALSO SHOULD AVOID BEING USED AS CONDUIT 0Y BOYCOTT OFFICES OR BY U.S. FIRMS FOR SUPPLY OF BOYCOTT-TYPE INFORMATION WHICH ALL U.S. PERSONS WILL BE PROHIBITED FROM SUPPLYING TO BOYCOTT OFFICES.

6. FOLLOWING STATEMENT DESCRIBES THE DIMENSIONS OF THE

NEW LAW FOR YOUR USE AS YOU CONSIDER APPROPRIATE IN DISCUSSIONS WITH HOST COUNTRY OFFICIALS. YOU SHOULD CONTINUE TO PROVIDE DETAILED REPORTING ON RESPONSES TO EMBASSY REPRESENTATIONS AND ON THE GENERAL REACTION OF ARAB COUNTRIES TO NEW LAW.

7. BEGIN STATEMENT: U.S. EXPORT ADMINISTRATION ACT PROVISIONS RELATING TO FOREIGN BOYCOTT PRACTICES FACED WITH LEGISLATIVE BILLS WHICH IN SOME RESPECTS CONFRONTED CONFIDENTIAL

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THE EXERCISE OF RIGHTS BY FOREIGN COUNTRIES TO REGULATE THEIR OWN EXPORTS AND IMPORTS. THE ADMINISTRATION HAS WORKED CLOSELY WITH THE CONGRESS. THE AMERICAN BUSINESS COMMUNITY AND OTHER INTERESTED GROUPS ON BEHALF OF A CONSENSUS SUPPORTING CAREFULLY DIRECTED, NON-CONFRONTATIONAL. THE RESULTING COMPROMISE SEEKS TO CURB THE INTRUSIONS OF FOREIGN BOYCOTT PRACTICES INTO U.S. COMMERCE, ESPECIALLY OF THOSE SECONDARY BOYCOTT PRACTICES WHICH WOULD PREVENT A U.S. FIRM FROM DEALING WITH ANOTHER FIRM OR WITH A THIRD COUNTRY WITH WHICH THE UNITED STATES HAS FRIENDLY RELATIONS. THE NEW LEGISLATION APPLIES TO FOREIGN BOYCOTT PRACTICES GENERALLY AS THEY AFFECT U.S. COMMERCE, AND IS NOT DIRECTED AGAINST ANY SPECIFIC COUNTRY OR GROUP OF COUNTRIES.

THE BROAD-BASED SUPPORT IN THE UNITED STATES FOR THE NEW LEGISLATION IS REFLECTED IN THE OVERWHELMING BACKING GIVEN TO THE EXPORT ADMINISTRATION ACT BY THE U.S. SENATE AND HOUSE OF REPRESENTATIVES.

THE NEW U.S. LEGISLATION RECOGNIZES THE SOVEREIGN RIGHT OF ALL COUNTRIES TO REGULATE THEIR OWN COMMERCE; IT ALSO REFLECTS A BELIEF THAT A COOPERATIVE APPROACH TO WORKING OUT UNITED STATES DIFFERENCES WITH OTHER COUNTRIES OVER BOYCOTT ISSUES IS IMPORTANT IN ORDER TO ADVANCE SHARED INTERESTS WHICH ARE SERVED BY A CONTINUED EXPANSION OF TRADE AND OTHER ECONOMIC RELATIONS.

SPECIFICS OF NEW LEGISLATION

THE LEGISLATION PREEMPTS ALL STATE ANTI-BOYCOTT STATUTES--ENDING THE CONFUSING AND AT TIMES DISRUPTIVE PATTERN OF ATTEMPTED STATE REGULATION OF BOYCOTT PRACTICES. CONFIDENTIAL

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IN GENERAL, U.S. FIRMS WILL BE REMOVED FROM ANY ACTIVE ROLE AS TO THE ENFORCEMENT OF FOREIGN BOYCOTTS DIRECTED AGAINST COUNTRIES WITH WHICH WE MAINTAIN FRIENDLY RELATIONS.

90 DAYS ARE ALLOWED FOR THE WRITING OF REGULATIONS UNDER THE AMENDED EXPORT ADMINISTRATION ACT AND AN ADDITIONAL 120 DAYS ARE THEN PROVIDED BEFORE SUCH REGULATIONS TAKE EFFECT. A "GRANDFATHER" CLAUSE WILL PROTECT CONTRACTS IN EFFECT ON MAY 16, 1977 FOR A PERIOD OF UP TO TWO AND A HALF YEARS. THESE TIMING PROVISIONS WILL FACILITATE NEEDED ADJUSTMENTS IN BUSINESS PRACTICES BY U.S. FIRMS.

U.S. FIRMS MAY CONTINUE TO RESPECT THE PROHIBITION OF BOYCOTTING COUNTRIES AGAINST THE ADMISSION OF GOODS OR SERVICES SUPPLIED BY BOYCOTTED COUNTRIES OR THEIR NATIONALS THOUGH U.S. FIRMS WILL BE REQUIRED AFTER ONE YEAR TO STOP MAKING CERTIFICATIONS TO THE EFFECT THAT GOODS OR SERVICES ARE NOT OF BOYCOTTED COUNTRY ORIGIN. POSITIVE CERTIFICATES OF COUNTRY ORIGIN, LIKE OTHER TYPES OF NORMAL COMMERCIAL DOCUMENTATION, WILL BE USABLE.

U.S. FIRMS WILL BE ABLE TO CONTINUE TO SUPPLY ALL NORMAL COMMERCIAL INFORMATION REQUESTED IN A NORMAL COMMERCIAL SETTING; THEY WILL BE UNABLE, HOWEVER, TO FURNISH INFORMATION ABOUT RELATIONSHIPS SPECIFICALLY WITH BOYCOTTED COUNTRIES OR BLACKLISTED FIRMS. IN RESPONSE TO BOYCOTTED-RELATED INQUIRIES.

U.S. FIRMS WILL GENERALLY BE ABLE TO FILL ORDERS FOR SPECIFIC IDENTIFIABLE GOODS OR SERVICES WITHOUT REGARD FOR A BUYER'S MOTIVATION IN SELECTING COMPONENTS OR SUBCONTRACTORS BUT A U.S. SUPPLIER WILL NOT BE ALLOWED TO ENGAGE IN BOYCOTT-RELATED SELECTIONS OF NON-BLACKLISTED PARTICIPANTS IN COMMERCIAL TRANSACTIONS.
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U.S. FIRMS OPERATING A BUSINESS IN A BOYCOTTING COUNTRY WILL BE ABLE TO COMPLY GENERALLY WITH THE LAWS OF THAT COUNTRY AS TO ACTIVITIES EXCLUSIVELY WITHIN THAT COUNTRY. THESE FIRMS ALSO SHOULD BE IN A POSITION TO COMPLY GENERALLY WITH IMPORT RESTRICTIONS OF THAT COUNTRY AS TO GOODS INFORMED FOR THEIR OWN USE THOUGH THEY COULD NOT MAKE BOYCOTT-RELATED SELECTIONS IF THEY WERE IMPORTING SUCH GOODS FOR RESALE.

U.S. FIRMS MAY CONTINUE TO COMPLY WITH REQUIREMENTS THAT EXPORTS FROM BOYCOTTING COUNTRIES NOT BE SHIPPED OR TRANSSHIPPED TO BOYCOTTED COUNTRIES OR TO THEIR NATIONALS.

U.S. FIRMS ALSO WILL BE ABLE TO CONTINUE TO CERTIFY THAT GOODS WILL NOT BE SHIPPED VIA VESSELS OR PORTS OF BOYCOTTED COUNTRIES.

U.S. FIRMS WILL BE PROHIBITED. HOWEVER, FROM JOINING IN A BOYCOTT OF A BLACKLISTED FIRM OR A COUNTRY WITH WHICH

THE UNITED STATES HAS FRIENDLY RELATIONS.

U.S. BANKS WILL BE ABLE TO PROCESS LETTERS OF CREDIT
CONTAINING CONDITIONS CONSISTENT WITH THE PROVISIONS OF
THE NEW LEGISLATION. BUT BANKS AND OTHER U.S. FIRMS WILL
NOT BE ABLE TO ENGAGE IN TRANSACTIONS WHICH INVOLVE
CONDITIONS OR AGREEMENTS REQUIRING ACTIONS BARRED BY THE
NEW LAW.

THE LEGISLATION APPLIES TO U.S. FIRMS AND THEIR CONTROLLED
FOREIGN SUBSIDIARIES OR AFFILIATES WITH RESPECT TO
ACTIVITIES IN THE INTERSTATE OR FOREIGN COMMERCE OF THE
UNITED STATES. END STATEMENT.
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8. OMITTED

9. OMITTED

10. REQUESTED REPRESENTATION SHOULD AWAIT NOTIFICATION
OF SIGNING OF NEW LEGISLATION BUT BE MADE PROMPTLY
THEREAFTER. CHRISTOPHER

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Message Attributes

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Enclosure: n/a
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